IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1992 of 2005
With
SPECIAL CIVIL APPLICATION No. 8540 of 2004
With
SPECIAL CIVIL APPLICATION No. 13949 of 2005
To
SPECIAL CIVIL APPLICATION No. 13985 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAIKH VILAYAT HUSSEIN HAJI AFZAL HUSSEIN ABDULKARIM - Petitioner(s)

Versus

A.M.C. - Respondent(s)

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Appearance :

SCA No.1992/05
Mr N S Sheth for petitioners
MR RM CHHAYA for Respondent No.1

SCA No.8540/04

Mr N S Sheth for the petitioners
M/s. Nanavati & Nanavati for respondent no.1

SCA No.13949 to 13985/05

Mr N S Sheth for the petitioners
Mr Maulin Raval for respondent no.1

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS
and
HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 24/10/2005

ORAL (COMMON)JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

Since the point to be decided arises from the same facts and the same circumstances, these petitions have been heard together and they are now being disposed of finally by this common judgment.

2. These petitions have been filed by the landlords as well as the tenants who are owners and occupiers respectively of O.Ps. no.76 and 76/2. They are now sought to be uprooted from those plots in wake of the T.P.Scheme No.37 in respect of Danilimda (North sector-1). It is the say of the petitioners-tenants that they have been on these plots as tenants of the original owners for the last many years and they have their shops as well as residential premises on these plots. With their eviction from these places, they will be rendered not only shelterless but even without any livelihood.

3. Having heard the learned Counsel for the parties, it appears that in all there are about 39 petitions of such kinds filed before this court and the respondent-Corporation has earmarked 3 plots namely; final plots no.97, 7

and 81 for allotment to the original landlords. In fact, so far as the final plots no.97 and 7 are concerned, they have already been allotted to the owners and there is no dispute with regard to the same. The question that is now to be decided is in relation to final plot no.81.

4. We have given our careful consideration to the submissions made by the learned counsel for the parties as well as to the averments raised in the petitions and other relevant materials. It further appears to us that if final plot no.81 is allotted to the owners, fate of the tenants and the occupants of O.Ps.no.76 and 76/2 will be totally uncertain and there is every possibility that the owner may not allow them to occupy the new place. He may ultimately dispose of the same to have the unjust encroachment by selling it at a high price. We do not want the owner to have *'two birds fallen at one stroke'*. We would certainly want to ensure that the tenants and/or the occupiers of the land are adequately protected even at the new places namely; on F.P. No. 81. We, therefore, direct the respondent-municipal corporation that while allotting final plot no.81 to the owners, it will ensure that 27 families who are on O.P. no.76/2 are accommodated on final plot no.81 in their original capacity of tenants. The said plot will be transferred to the owners and they will be the owners of O.P. No.76/2 and they will now be owners of F.P. no.81. However, the tenancy rights of the aforesaid 23 families will not be disturbed and the

same will not undergo any change. The Corporation is, therefore, directed to take all the adequate measures to see that tenancy rights of these persons are adequately protected vis-a-vis the owners. So far as Special Civil Application No.13949 is concerned, it is stated by the learned Advocate for the petitioners that there is an additional dispute raised by the petitioners in that petition that they have not received compensation for the area admeasuring 782 sq.meters. Mr R M Chhaya, learned Advocate for the respondent, however, disputed this fact and also shows us a communication indicating the payment of compensation for that portion of the land. Since this petition has been filed under Article 226 of the Constitution of India and this being a disputed question of fact, we will not enter into it. If those petitioners so desire, they may make representation to that limited extent only, to the Corporation.

5. It is brought to our notice by the learned counsel for the petitioners that in a civil suit pending before the City Civil Court, Ahmedabad, temporary injunction has been granted against the Ahmedabad Municipal Corporation restraining it from disturbing the tenants of those plots till they have been accommodated elsewhere. Now that the aforesaid development has taken place, it is desirable that the injunction should continue only upto the time the tenants are shifted to Plot No.81. As soon as they are shifted and settled down on plot no.81, necessary application

for vacating the injunction may be made before the concerned forum and we hope that it will be granted by the concerned forum. We also clarify that the interim relief granted in Special Civil Application No.8540/04 will continue till the tenants are shifted to the new plots and upon shifting the same will get automatically vacated.

With the aforesaid direction, these petitions are disposed of. Notice in each petition stands discharged.

[Kshitij R Vyas, J.]

[Akshay H Mehta, J.]

msp